

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE SOUTHERN DISTRICT OF TEXAS

3 GALVESTON DIVISION

4 Dawn M. Jackson, Individually
5 and on Behalf of all Similarly
6 Situated Persons,

7 Plaintiffs,

Civil Action No. G-10-CV-338

8 vs.

April 21, 2011
Galveston, Texas
11:00 a.m.

9 Jacobs Field Services North
10 America, Inc.,

11 Defendants.

12 MOTION HEARING

13 BEFORE THE HONORABLE JOHN R. FROESCHNER

14 UNITED STATES MAGISTRATE JUDGE

15 APPEARANCES:

16 For the Plaintiffs

Josef Franz Buenker
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Houston, Texas 77008

18 For the Defendant

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24
25 Proceedings from official electronic sound recording;
transcript produced by court approved transcriber.

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1 THE COURT: Don't get up. Thanks. Keep you seats,
2 or you can sit down.

3 Okay. All right. Just for purposes of the
4 record, this is a Galveston case, 2010-338, Dawn Jackson
5 versus Jacobs Field Services.

6 Could I get appearances for the record? Who's
7 here, please?

8 MR. BUENKER: Yes, Your Honor. Joe Buenker,
9 appearing on behalf of the Plaintiffs.

10 THE COURT: Great. Thanks.

11 MR. WATSON: Tim Watson for Jacobs, and Steve
12 Shardonofsky.

13 THE COURT: Great. Please, sit down.

14 All right. I mean, I understand the dispute,
15 and I've read through the pleadings or the motion. But there
16 wasn't a reply, but I assume, since you're here, you're still
17 wanting to certify the class.

18 MR. BUENKER: I had miscalendared it, Your Honor, and
19 by the time I realized it I was past the deadline, so -

20 THE COURT: Okay.

21 MR. BUENKER: -- I didn't -

22 THE COURT: Okay.

23 MR. BUENKER: But, yes, I am still - and I disagree
24 with the assertions by Jacobs.

25 THE COURT: Okay. Which assertions do you disagree

1 with -

2 MR. BUENKER: Well -

3 THE COURT: -- in regard to the fact that these might
4 all become mini trials because not everybody had to attend
5 every day and those kinds of things?

6 MR. BUENKER: I think the issue is going to be
7 whether the various shifts has to attend - had to attend
8 safety meetings. And my folks only -

9 THE COURT: Okay.

10 MR. BUENKER: -- worked on the first shift.

11 THE COURT: Okay.

12 MR. BUENKER: And I think that if a notice goes out
13 that - to folks - and I think it has to go out to everyone who
14 worked in the Scaffolding Department, but if notice goes out
15 that specifies - and you were required to attend safety
16 meetings at the beginning of your shift, I think that culls
17 out all those folks who say I never had to go to a safety
18 meeting.

19 THE COURT: Okay.

20 MR. BUENKER: And I don't - I mean, unless Jacobs can
21 say these are the people we required to come prior to their
22 shift to attend a safety meeting, I don't think there's any
23 other way to cull out the folks that have the same assertion -
24 and that's really the -

25 I know that the response addressed both the

1 walking time and the - and I'm not concerned about the walking
2 time -

3 THE COURT: Sure.

4 MR. BUENKER: It's the safety meeting.

5 THE COURT: Right.

6 MR. BUENKER: And I think the only way to see if
7 there are other folks who assert that they were subject to
8 this kind of practice just to have the notice sent out.

9 My clients say that they were there, and their
10 co-workers were all there and required to be there.

11 THE COURT: Okay. And do your clients say that the
12 shift that they were on was pretty constant, so it was the
13 same people over and over again, or were there new people
14 showing up on that ship? Does that make sense?

15 MR. BUENKER: I don't know that I asked that specific
16 question.

17 THE COURT: Okay. Okay.

18 MR. BUENKER: My client said there were about
19 seventy-five people in their position, who were required to
20 substitute these same circumstances.

21 THE COURT: Oh.

22 MR. BUENKER: And I don't know what the identities -
23 they worked fairly constant shifts. I think they occasionally
24 had to come in early or work late here and there, but the two
25 of them worked fairly constant -

1 THE COURT: Okay.

2 MR. BUENKER: -- shifts.

3 THE COURT: I understand the problems that the
4 Defendants are pointing out. And I guess I'm starting from
5 the situation first that if Jacobs didn't pay these people,
6 and if Jacobs really owes these people, it ought to pay them
7 and shouldn't just be able to walk away from it. On the other
8 hand, I realize how difficult it's going to be to identify
9 these people or send out any kind of notice.

10 But let's just assume for our purposes right now
11 that we're thinking about doing that. And I'm not saying
12 that's going to be my ruling, but let's just assume that. Can
13 we do it conditionally under the statute, or basically, like,
14 reserving the right, obviously, to decertify?

15 MR. WATSON: Oh, absolutely, Judge. That's,
16 typically -

17 THE COURT: Please sit down.

18 MR. WATSON: Typically - you know, that's typically -

19 THE COURT: Okay.

20 MR. WATSON: -- how the case progresses, is there's
21 conditional certification.

22 THE COURT: All right.

23 MR. WATSON: Notice goes out, and then, you know,
24 whoever joins, joins.

25 THE COURT: Right.

1 MR. WATSON: There's additional discovery, and then,
2 typically, there is a motion for decertification, based on the
3 additional discovery.

4 THE COURT: Okay. And then, I guess we're all in
5 agreement - we're focusing in on these meetings -

6 MR. BUENKER: Yes, sir.

7 THE COURT: Because the commuting time isn't covered.

8 So, what do you know about the recordkeeping of
9 Jacobs? Do they keep attendance records of these meetings, so
10 that they know who was there and who wasn't? Do they - well,
11 I guess, let's start there. I mean, if we looked at them,
12 would we find a list of everybody who was at these meetings,
13 when the meetings were held shift-wise, those kinds of things,
14 and if so, how difficult is it to produce those, because they
15 probably would be discoverable anyway -

16 MR. BUENKER: Sure.

17 THE COURT: -- even if we didn't certify the class,
18 insofar as the ones that these people attended.

19 MR. BUENKER: Right.

20 THE COURT: Which from what I understand you're
21 saying is you're focused, right?

22 MR. BUENKER: Yes, sir.

23 THE COURT: The people on that shift, at least, and
24 if it turned out to be more than that later that's one thing.

25 MR. BUENKER: Right. Right.

1 THE COURT: But I mean - it seems like if these
2 records exist they could ask for them in discovery, and they'd
3 find out who was there and who wasn't anyway. So - but I
4 don't know if those records exist. Do you know?

5 MR. WATSON: I'm going to let Mr. Shardonofsky -

6 THE COURT: Sure.

7 MR. WATSON: -- because we just had a conversation a
8 couple of days ago about some records.

9 THE COURT: Yeah.

10 MR. SHARDONOFSKY: Your Honor, my understanding, from
11 speaking with various folks at Jacobs, is that these were sort
12 of informal safety meetings that did occur every day or almost
13 every day, but that there wasn't an attendance list that was
14 taken -

15 THE COURT: Okay.

16 MR. SHARDONOFSKY: -- during these safety meetings.
17 My understanding is that Jacobs has various types of
18 timekeeping records for the Scaffolding Department, but those
19 records won't necessarily show who attended these meetings -

20 THE COURT: Okay.

21 MR. SHARDONOFSKY: -- or the time that these meetings
22 started.

23 THE COURT: Okay.

24 MR. SHARDONOFSKY: What Jacobs has is time sheets -

25 THE COURT: Sure.

1 MR. SHARDONOFSKY: -- that were prepared by the
2 individual foreman for each crew. And those - my
3 understanding is that they're at an off-storage facility right
4 now. It's going to take some time and expense to get at
5 those, if we need to.

6 THE COURT: Yeah.

7 MR. SHARDONOFSKY: So, we haven't pulled them yet,
8 but, you know, we're aware that they exist.

9 THE COURT: Okay.

10 MR. WATSON: And we just found out that they exist.

11 MR. SHARDONOFSKY: We just found out that they exist
12 very recently.

13 Jacobs also has electronic documents showing the
14 times that these folks scanned in at the Jacobs compound there
15 inside the BP Texas Refinery. And those records - it's my
16 understanding that they show, obviously, when somebody was in
17 attendance that day, but they won't necessarily show us the
18 time that they were working. Because people would often scan
19 in and the, subsequently, eat breakfast there or read the
20 newspapers until their shifts began.

21 THE COURT: Okay.

22 MR. SHARDONOFSKY: And so, you know, that can get us
23 an approximation to the work time, but I don't think that's
24 going to - that's not going to tell us or answer your
25 question, Your Honor -

1 THE COURT: Right.

2 MR. SHARDONOFSKY: -- about when these meetings
3 started or who was present at those meetings.

4 THE COURT: Okay. And as I understand the
5 Plaintiff's allegations - and correct me if I'm wrong - but
6 that your allegations is there was always a meeting at the
7 beginning of the shift, that everybody was supposed to attend
8 and nobody got paid for them, basically.

9 MR. BUENKER: That's my understanding.

10 THE COURT: Okay.

11 MR. BUENKER: Now, my understanding from the
12 Defendants is that there were hourly shift supervisors, or
13 some position like, that were paid for an extra hour every
14 day.

15 THE COURT: Okay.

16 MR. BUENKER: And those folks, clearly, if they're
17 being - if they're a shift supervisor, hourly or not, they're
18 being compensated for their time. They're not -

19 THE COURT: Sure.

20 MR. BUENKER: -- a potential -

21 THE COURT: But your theory is that most of these
22 people, of the seventy-five or so that you estimate exist,
23 were attending these meetings or supposed to attend these
24 meetings, didn't get paid for it and, actually, clocked on for
25 payment after the meetings were over - were on the clock, I

1 mean, not scanned in -

2 MR. BUENKER: Yes. Right.

3 THE COURT: -- but were on the clock.

4 MR. BUENKER: Were on the clock after the meetings.

5 THE COURT: Yeah.

6 MR. BUENKER: My understanding is that, based on what
7 I've heard from Mr. Shardonofsky before, is that there's this
8 scan-in procedure, but that they're not officially put on the
9 clock at the seven o'clock work in - there's not a subsequent
10 time card, time punch, anything like that, to show when they
11 actually - when Jacobs considers them working they just have a
12 de facto. You're on the clock at seven.

13 THE COURT: Okay.

14 MR. BUENKER: And my folks say we were required to be
15 there a quarter 'til for these safety meetings.

16 THE COURT: Okay. So, the scan-in just gets them on
17 the property; doesn't it?

18 MR. BUENKER: Into the Jacobs compound inside the BP
19 plant.

20 THE COURT: Yeah. And so, if he wants to get their
21 early and drink coffee and read the paper, he scans in at five
22 o'clock, whatever the deal is. But seven o'clock is when they
23 all start. They don't actually punch the clock; it's just
24 everybody gets paid from seven 'til wherever?

25 MR. SHARDONOFSKY: That's true.

1 THE COURT: Okay.

2 MR. SHARDONOVSKY: And obviously, the leaders there,
3 the supervisors, if somebody works during their lunch shift or
4 works extra, they make an adjustment on their time sheets on a
5 daily basis.

6 THE COURT: Sure.

7 MR. SHARDONOVSKY: So -

8 THE COURT: But we're not really fighting about that.
9 As I understood, the Plaintiff is just saying, I'm assuming
10 there's a fifteen minute meeting every day, that everybody's
11 supposed to be at, that nobody gets paid for. We just can't
12 identify who would have been at those meetings from records
13 that exist with Jacobs, correct?

14 MR. SHARDONOVSKY: My understanding is that that's
15 correct.

16 THE COURT: Okay.

17 MR. SHARDONOVSKY: Although we haven't seen the time
18 sheets yet. So, maybe the time sheets may tell us something
19 that we don't know today.

20 THE COURT: Okay. But probably not. They'll
21 probably just say, seven o'clock is when you were - you're
22 paid from seven to whatever. And really, it's going to be
23 their word against yours if they show up, that they were
24 either at the meetings or not.

25 MR. SHARDONOVSKY: I think that's correct, Your

1 Honor.

2 MR. WATSON: Well, we would know - if I'm
3 understanding correctly, we would know who at least scanned
4 in.

5 THE COURT: And, yeah -

6 MR. WATSON: If someone said, I was there for the
7 meeting -

8 THE COURT: Got you.

9 MR. WATSON: -- and it shows that they didn't scan in
10 until after seven -

11 THE COURT: Okay. Sure.

12 MR. WATSON: -- we would know that.

13 THE COURT: Sure. And just to follow up on that, if
14 somebody scanned in after seven, like at 7:15, will your pay
15 records still show they got paid from seven until five or
16 whatever?

17 MR. WATSON: Well, that's a good question.

18 MR. SHARDONOVSKY: My understanding is that that's
19 not the case.

20 THE COURT: Okay. Because then, they've got a
21 record the person was late.

22 MR. SHARDONOVSKY: There's a reconciliation that's
23 done -

24 THE COURT: Okay.

25 MR. SHARDONOVSKY: -- between the time sheets and the

1 scan-in hours -

2 THE COURT: Okay.

3 MR. SHARDONOFSKY: -- where if somebody does show up
4 late, 7:15 or 7:20, then that time is taken away from them.

5 THE COURT: Okay. And the records that you think
6 you've identified existing somewhere have these things in
7 them?

8 MR. SHARDONOFSKY: Well, we have -

9 THE COURT: Or at least, you think they do.

10 MR. SHARDONOFSKY: That's correct, Your Honor. We
11 have possession of the scan time documents. What we don't
12 have right now, if it's off storage, is the daily time sheets
13 for these folks.

14 THE COURT: Okay. So, you've got the scan-in stuff.
15 All you need is the time sheets, if we go that route, so that
16 you can figure out this person could not have possibly been at
17 the meeting, which is what you're suggesting, or it's very
18 possible they could have been, but we'll never really know.
19 We'll just have to assume that they're telling the truth when
20 they get sworn.

21 MR. BUENKER: I think the scan in sheets are going to
22 - that they have are going to tell us, this person could not
23 possibly have been -

24 THE COURT: That's what I'm saying.

25 MR. BUENKER: -- there, because they scanned in at

1 seven o'clock or whatever, right.

2 THE COURT: Yeah. But most of them - yeah. Okay. I
3 got you. So, we could just zero in on that. And you agree
4 we're just dealing with the meetings how, so if we do send a
5 notice, it's just going to be -

6 And you said three years. Is the Statute of
7 Limitations three years in a case like this?

8 MR. BUENKER: It's presumptively two and potentially
9 three.

10 THE COURT: Potentially three, depending on intent or
11 whatever?

12 MR. BUENKER: Right.

13 MR. WATSON: Exactly.

14 THE COURT: Okay. So then, -- okay. So, we could, I
15 guess then, say we're go with the class certification with
16 some specific notice going out, because there'll be - there're
17 only seventy-five people, perhaps. I assume that's in the
18 ballpark figure. Has that been determined?

19 MR. SHARDONOVSKY: No. We haven't sort of pinned
20 down the number yet, Your Honor.

21 THE COURT: Sure.

22 MR. SHARDONOVSKY: There was, obviously, some
23 turnaround.

24 THE COURT: Right.

25 MR. SHARDONOVSKY: That's in the workforce. My

1 understanding is that it's somewhere in that ballpark.

2 THE COURT: Okay. That's what I was just asking.

3 And you're concentrating, simply, on those people who at some
4 time or another worked the morning shift?

5 MR. BUENKER: Who are required to attend safety
6 meetings at the beginning of their shift. I mean, I -

7 THE COURT: Okay.

8 MR. BUENKER: My clients don't have personal
9 knowledge, as far as I know, of whether the evening shift or
10 any other shift has that same requirement.

11 THE COURT: Okay.

12 MR. BUENKER: They only know about their shift.

13 THE COURT: Okay.

14 MR. BUENKER: So, my proposal would be to send notice
15 to all employees who were hourly employees in this department,
16 but have the notice, specifically say, if you were required to
17 attend the safety meeting at the beginning of your shift.

18 THE COURT: Okay. Where do they come up with the
19 estimate of seventy-five people then?

20 MR. SHARDONOVSKY: I don't know. I mean, that's -

21 THE COURT: I mean, they got -

22 MR. SHARDONOVSKY: That's -

23 THE COURT: It sounds to me like they got pretty
24 lucky estimating, but they were -

25 MR. SHARDONOVSKY: They both told me that that's - I

1 mean, separately, that that's what they thought was about the
2 number of people, so -

3 THE COURT: Okay. They just heard that, I guess.
4 All right.

5 So, how difficult would it be to identify the
6 actual employees that fall within that period of time?
7 Probably not hard at all because you've got the time records
8 already. Right?

9 MR. SHARDONOVSKY: I think that's correct, Your
10 Honor.

11 THE COURT: So -

12 MR. BUENKER: That's correct, Judge.

13 THE COURT: And do you know if most of these people
14 still work there, or is Jacobs still there or -

15 MR. SHARDONOVSKY: Jacobs is still working at the BP
16 plant. My understanding is that in the past several months
17 they've scaled back their operations.

18 THE COURT: Okay.

19 MR. SHARDONOVSKY: And that some folks are no longer
20 working at the BP Texas Refinery.

21 THE COURT: Okay.

22 MR. SHARDONOVSKY: They've been relocated to other
23 work sites in the area.

24 THE COURT: Okay.

25 MR. SHARDONOVSKY: I know other people have been laid

1 off.

2 THE COURT: Well, sure.

3 MR. SHARDONOFSKY: So, I think we can probably
4 identify those individuals, but many of them may not be
5 working for Jacobs currently.

6 THE COURT: All right. I'm just thinking - last
7 known addresses, I guess, is what you need, so you can send
8 them out. And they either get it or they don't. Or they hear
9 about it, unless there's some sort of publication you put in
10 the newspapers or things like that, or hire somebody like
11 Masten does, who gets on TV and -

12 MR. BUENKER: I'm not sure I'm going that route, Your
13 Honor.

14 THE COURT: And then, I guess, we just find out how
15 many people respond, and if there aren't any, there aren't
16 any. And if they're a whole bunch, then we have to, I guess,
17 decide whether we decertify it. I assume that's what you were
18 talking about earlier.

19 MR. WATSON: Yes.

20 THE COURT: Because it really does just become a
21 mishmash, but we still have identified that way the people who
22 claim that they weren't paid and under FLSA probably should
23 have been paid, from what I understand about the law. So, it
24 really seems only fair that they would, at least, get an
25 opportunity to say, hey, you owe me some money from -

1 MR. WATSON: Yeah.

2 THE COURT: So, pay it. And I don't know of any
3 other way that - I mean, it seems like we're soliciting
4 business this way, but I guess lawyers do that these days now.
5 They didn't do it when I was practicing law.

6 Okay. Well, my - I'm leaning that way, but is
7 there anything more you would like to say in support of me not
8 doing that, since especially, you've told me I've got the out
9 later on down the line, and it doesn't sound like it's a big
10 burden on Jacobs to produce the information. We're going to
11 need to, at least, get this notice out, and then we have to
12 worry about - okay?

13 MR. WATSON: Well, Judge, I - you know - we've sort
14 of walked through the analysis, and it's difficult to argue
15 with your reasoning. You know, we've briefed it -

16 THE COURT: Sure.

17 MR. WATSON - as best we can.

18 THE COURT: It's - you know - I dealt with something
19 like this in a Wal-Mart situation, where they wanted every
20 Wal-Mart employee in the entire State of Texas - I said, whoa,
21 wait a minute. Now, that's one thing. But we're talking
22 about a fairly small number of people, a fairly localized
23 operation, and you're telling me you really already have in
24 possession the timesheets, or whatever they are, to identify
25 these people and probably even have the addresses and stuff

1 like that on them, and so -

2 And if not, I would think - it's not a big deal,
3 I guess is what I'm saying. I mean, it's going to cost your
4 clients some money to do it, but if we were talking about
5 thirty thousand people, you know, I'd be more concerned about
6 it -

7 MR. WATSON: Sure.

8 THE COURT: -- I think.

9 MR. WATSON: Sure.

10 THE COURT: But it could be we'd just be talking
11 about fifteen by the time it all plays out. So, I think what
12 I'll do is at least start the process going. So, what notice
13 language do you think we need?

14 MR. WATSON: Well, typically, we work out the form of
15 notice. It's become fairly standardized.

16 THE COURT: Is it? Okay.

17 MR. WATSON: I'm sure Mr. Buenker has a form; I have
18 a form. I think - so - I mean - and unless Mr. Buenker has
19 some specific requests. Usually, it's - I mean, here I think
20 the - what I would propose if we're going to go the notice
21 route -

22 THE COURT: Yeah.

23 MR. WATSON: -- is to identify the hourly employees,
24 excluding the foreman and/or supervisors who were paid at a
25 shift that began at seven o'clock - or excuse me - at six

1 o'clock.

2 THE COURT: Okay. Okay. Yeah. It's just a matter
3 of tailoring it so that -

4 MR. WATSON: Yeah.

5 THE COURT: -- it certain- -- it focuses on the
6 people we really want to get in touch with, as opposed to -

7 MR. BUENKER: And then, I agree. I think we can work
8 out -

9 THE COURT: Okay.

10 MR. BUENKER: -- work out the particular language of
11 the notice. I think it ought to be - go out in English and in
12 Spanish, if that's acceptable to the Court and to the
13 Defendant, because - I know from my experience one of my
14 clients is - I mean, speaks English but not terribly good
15 English, and I understand some of the other folks are
16 primarily Spanish speakers as well.

17 THE COURT: Okay. So, the first step is once I grant
18 this, with the understanding we could decertify - well, I
19 guess you can always decertify, so I don't need to worry about
20 that. We grant this to let notice go out. We structure the
21 notice, so that we've got a notice that's agreeable to
22 everybody, or if you need me to help do that because you can't
23 agree. And then, we produce the time records and the
24 addresses and send them out - or I guess we could be doing
25 that anyway, since you know it's going to be produced. And

1 then, you could ask them to start getting the other
2 information that's locked up some place.

3 And what else do we do then at this juncture?

4 MR. BUENKER: And we'll submit the notice to the
5 Court for the Court's approval.

6 THE COURT: Sure.

7 MR. BUENKER: And once it gets approved, it'll be
8 sent.

9 THE COURT: Okay.

10 MR. WATSON: I don't know how long it will take to
11 identify the putative class, potential class members,
12 considering we just found these records the other day.

13 Do you have any view on that?

14 MR. SHARDONOVSKY: It may take several weeks, Your
15 Honor.

16 THE COURT: That's fine.

17 MR. SHARDONOVSKY: You know, I guess - and I'm sort
18 of having - I'm thinking in my head how to identify these
19 individuals. Obviously, there were different shifts at the
20 site, and if we're looking to identify a group of people who
21 worked the morning shift, you know, different people had
22 different shifts throughout their tenure with the company at
23 BP. So, it may take a bit of time to cull out that
24 information from the time records, and I can get a list
25 together. But, you know, I think several weeks - we might

1 need several weeks -

2 THE COURT: Sure.

3 MR. SHARDONOFKY: -- to do that.

4 THE COURT: Okay. Was he trying to limit the class
5 from less than what you wanted?

6 MR. BUENKER: I didn't think we were just talking
7 about the morning class.

8 THE COURT: I didn't either. I didn't think you were
9 any way.

10 MR. BUENKER: Right. I'm certainly not.

11 THE COURT: I think you were just talking about
12 people who had to go to -

13 MR. BUENKER: Hourly employees who worked at the -

14 THE COURT: Had to go to meetings -

15 MR. BUENKER: -- Scaffolding Department, who were not
16 supervisory personnel. I would think that that would be a
17 code that Jacobs can type into their computer system and get
18 those people.

19 THE COURT: And who didn't get paid for it.

20 MR. BUENKER: Right. Right.

21 THE COURT: Yeah. I mean, if they are right in the
22 middle of their shift and they were on a clock and they were
23 being paid, I mean, it's got to be conditioned on - plus you
24 got stiffed out of money.

25 MR. BUENKER: Right.

1 MR. SHARDONOVSKY: I guess it's my understanding that
2 the only safety meetings that occurred at the site were done
3 in the morning.

4 THE COURT: That could be.

5 MR. SHARDONOVSKY: And so -

6 THE COURT: And if so, that'll - but it doesn't mean
7 that we can't err on the side of inclusion as opposed to
8 exclusion.

9 MR. SHARDONOVSKY: So, just so I can get the Court's
10 clarification.

11 You're looking for a list of all the hourly
12 scaffold builders or scaffold helpers at the site; is that
13 correct, Your Honor?

14 THE COURT: I think so.

15 MR. BUENKER: All hourly employees.

16 THE COURT: And then, the notice will be that we were
17 required to attend meetings and did attend meetings and were
18 not compensated for it, and, I guess, in a nutshell; isn't it?

19 MR. BUENKER: Basically.

20 THE COURT: Something like that.

21 MR. BUENKER: Yes, Your Honor.

22 THE COURT: Okay. And then, the notice shouldn't be
23 hard to draft up, but then we just need to wait on the list of
24 the people we're going to send it to.

25 MR. WATSON: Yeah. And Mr. Buenker may be right. It

1 may be something that we could go and they can punch up on a
2 computer real quick.

3 THE COURT: Yeah.

4 MR. WATSON: I just don't know.

5 THE COURT: Okay. And we're going back three years
6 from -

7 MR. WATSON: Three years from today.

8 MR. BUENKER: From whatever day the information gets
9 produced, Your Honor.

10 MR. WATSON: Yeah.

11 THE COURT: So - all right. Then, I can sign that
12 order. If you can get me the notice within ten days?

13 MR. BUENKER: Yes, sir.

14 THE COURT: I mean, does that sound realistic?

15 MR. WATSON: Sure.

16 THE COURT: Okay. Today's the 21st. So - well, why
17 don't we just say by the - well, I'm going to be gone the week
18 of May the 2nd, but if you can just get it here sometime
19 during that week of May the 2nd, I'll just set May the 6th as
20 the deadline for it, because I won't be here anyway until May
21 the - the next Monday, unless you want to get it in next week.
22 It doesn't matter to me.

23 MR. WATSON: I think we'll take the time just in
24 case -

25 THE COURT: Okay.

1 MR. WATSON: There's a few sticking points,
2 typically, on the form of notice, so - like, you know, how
3 long a period to opt in, and -

4 THE COURT: Okay.

5 MR. WATSON: I can't remember all the other arguing
6 points.

7 THE COURT: That's a deal.

8 And then, if you've got problems and when I back
9 it says, these are our proposals on each side, I'll just - if
10 it's okay with you I'll just set up a phone conference -

11 MR. WATSON: That's fine.

12 THE COURT: -- and we'll knock it out.

13 MR. WATSON: That's fine.

14 THE COURT: We won't have a record of it, but -

15 MR. WATSON: That's fine.

16 THE COURT: -- who cares.

17 MR. BUENKER: Yes, sir.

18 THE COURT: And then, I guess you can start the ball
19 rolling, knowing what we're going to be doing, as far as
20 getting that other information, if you need it, to scan in
21 stuff or - and you're thinking it'll be several weeks before
22 you can get all that and identify these people, probably?

23 MR. WATSON: Well, again, Your Honor, just
24 identifying the people that may not take too much time.

25 THE COURT: Okay.

1 MR. WATSON: The records that Mr. Shardonofsky has
2 discovered are - that may be quite a task.

3 THE COURT: Yeah. Where are they; do you know?

4 MR. WATSON: Off site, in storage. I don't know
5 exactly where.

6 MR. SHARDONOFSKY: I don't know, Your Honor, where
7 they're located right now.

8 THE COURT: But somebody does, I guess, so -

9 MR. SHARDONOFSKY: Yes.

10 THE COURT: All right. I can't imagine there're just
11 too voluminous, so -

12 MR. WATSON: Well, I don't know if, for example, if
13 they're separated out by scaffold workers.

14 THE COURT: I see what you're saying.

15 MR. WATSON: I mean, they may just be some -

16 THE COURT: Okay.

17 MR. WATSON: And, apparently, there's not an
18 electronic copy. They're literally - is that right?

19 MR. SHARDONOFSKY: I think so.

20 MR. WATSON: Literally, you know, we're talking about
21 paper.

22 THE COURT: Okay.

23 MR. BUENKER: And I think those records go more
24 to the merits of the individual claims, as opposed to
25 identifying the -

1 THE COURT: Yeah.

2 MR. BUENKER: -- the people who - for purposes of
3 notice. I think we're talking about -

4 THE COURT: Okay.

5 MR. BUENKER: -- whoever opts in those records may
6 become more important. But that's all.

7 THE COURT: I've got you. So, until we know who opts
8 in and doesn't, I mean, there's no rush to get those records.

9 MR. SHARDONOFSKY: It may not make sense to pull the
10 records for a hundred folks -

11 THE COURT: Yeah.

12 MR. SHARDONOFSKY: -- if only ten are going to opt
13 in. We may have to just wait to see who opts in -

14 THE COURT: Okay.

15 MR. SHARDONOFSKY: -- and then, you know, sort of go
16 out and seek the records after --

17 THE COURT: Sure.

18 MR. SHARDONOFSKY: -- we know who's in or not.

19 THE COURT: And then, how much time, traditionally,
20 do you give people to opt in, or what's realistic?

21 MR. WATSON: You know, typically, the defense argues
22 for forty-five. The Plaintiff argues for ninety, and they
23 compromise at sixty. If you want to know and cut to the
24 chase. I mean, that's, particularly, how it works.

25 MR. BUENKER: That sounds about right.

1 THE COURT: Okay. All right. Well, then, the notice
2 then will have - you've got sixty days in it. All right. So,
3 that means if we've got that in a couple of weeks and then
4 we've got two more months, then there's not much we can do
5 until we know who's in or not.

6 MR. WATSON: Correct.

7 THE COURT: I mean, is that right?

8 MR. WATSON: Correct.

9 MR. BUENKER: Yes, sir.

10 THE COURT: So, it doesn't make any sense to set
11 deadlines or discuss discovery issues or anything like that.
12 And I guess you could find out how easy it's going to be to
13 get that other information without really telling somebody to
14 go to work on it. If you think I can - if I could set a
15 deadline to motivate that to get done because you think that's
16 a good idea I'll do it. And then, you can blame - you know,
17 you can say, well, the Judge just said we got to do it. We've
18 got to get it done, and - with the understanding, between us
19 girls, I ought to let you have more time if you really can't
20 do it.

21 MR. BUENKER: We're going to play in the boxes to see
22 how it's organized there, Your Honor.

23 MR. SHARDONOFSKY: I think, Your Honor, in the past
24 week we sort of located these documents.

25 THE COURT: Okay.

1 MR. SHARDONOFSKY: And I've heard some grumblings
2 about how difficult -

3 THE COURT: Well, sure.

4 MR. SHARDONOFSKY: -- it is to get these records,
5 but -

6 THE COURT: Yeah.

7 MR. SHARDONOFSKY: -- we're going to sort of get the
8 ball rolling and see what, you know, what the volume of
9 documents it is that we're talking about.

10 THE COURT: Okay.

11 MR. SHARDONOFSKY: See where they're located, and,
12 you know, maybe we can have a discussion with Mr. Buenker next
13 week.

14 THE COURT: All right. Then, is everybody
15 comfortable if I don't set a deadline about that?

16 MR. BUENKER: Yes, sir.

17 THE COURT: We just deal with it after the notice
18 period comes.

19 MR. BUENKER: Yes, sir.

20 THE COURT: Okay.

21 All right. Then, what else can we do today?
22 We've got the notice.

23 MR. BUENKER: Nothing, Your Honor.

24 THE COURT: Okay.

25 MR. WATSON: I think that's it.

1 THE COURT: The notice will get here by May the 6th.
2 Hopefully, it'll be agreeable. It doesn't seem like it can't
3 be something you can cobble together. The sixty days will -
4 that's fine with me. And then, we're just see whenever it
5 goes out and what happens.

6 So, I guess once we know when it goes out then I
7 can just sort of set a scheduling conference or a status
8 conference, maybe seventy-five days out from there.

9 MR. BUENKER: Yes, sir.

10 MR. WATSON: Yeah.

11 THE COURT: Then, we'll just see what happens.

12 MR. WATSON: That sounds good.

13 THE COURT: Okay.

14 MR. BUENKER: It'll work.

15 THE COURT: Okay. So, really, all I'm doing today
16 then is granting the motion for certification of the class?

17 MR. BUENKER: Thank you.

18 THE COURT: Anything else, then, we can do while
19 you're here?

20 MR. BUENKER: I don't believe so.

21 THE COURT: No?

22 MR. WATSON: Go to the beach.

23 THE COURT: Well, spend some money in Galveston.
24 We need it.

25 MR. BUENKER: Eat some seafood.

1 THE COURT: Okay. Well, thanks for coming down.

2 MR. BUENKER: All right. Thank you, Your Honor.

3 MR. WATSON: Thank you, Your Honor.

4 MR. SHARDONOFSKY: Thank you, Judge.

5 THE COURT: And if something comes up, just let me
6 know.

7 MR. BUENKER: Thank you, Honor. Have a good Easter.

8 THE COURT: Okay. Sure.

9 (Proceedings concluded at 11:26 a.m.)

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF TEXAS
3 GALVESTON DIVISION
4

5 I, Kareem Frederick, court approved transcriber, certify
6 that the foregoing is a correct transcript from the official
7 electronic sound recording of the proceedings in the above-
8 entitled matter.
9

10 /s/ Kareem Frederick
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July 15, 2011
Date